Before the
FEDERAL COMMUNTCATIONS COMM1SSION
Washington, D.C. 20554

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71
	)	File No. EB-09-01-1751
Participation in Auction No. 61 and Licensee Of Various Authorizations in the Wireless Radio Services	)	FRN: 001358779
	)	
Applicant for Modification of Various Authorizations in the Wireless Radio Services Applicant with ENCANA OIL AND GAS (USA), INC.; DUQUESNE LIGHT COPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL, MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, INC.; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE – MID CONTINENT, LLC; DENTON COUNTRY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	)	App. FNs 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, 0004604962.

To: Marlene H. Dorch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

Request to Extend Discovery Period and for Other Relief

Warren Havens, the undersigned ("Havens"), for SkyTel entities (previously defined in this Hearing)[1] request that the Judge extend the current discovery cut off deadline in this Hearing as to issue (g) (and as to other issues) for reasons given below, and related to those reasons, also asks the Judge to take other actions required under the Commissions HDO, FCC 11-64, given the history, facts in, and current situation of the Hearing as established by the HDO (the "Request").

Initially, we point out that no party has obtained from the Commission any modification

[1] In preceding filings, I have described the basis of my acting pro se at the current time. That applies to this filing.

of the HDO.

Skytel requests that the Judge set aside the current discovery deadlines and set a new deadline or deadlines consistent with the matters presented herein. Alternatively, we request that the Judge impose sanctions upon Maritime by drawing negative inferences regarding issue (g) that Maritime has failed to meet the burden of proof that only the licensee can meet (to keep records and prove stations were lawfully and timely constructed and kept in permanent operation), and thus, the stations have "automatically terminated without specific Commission action" as the relevant Part 1 and Part 80 rules provide.

In support of this Request, SkyTel submits the following:

Default in the Maritime Antitrust case,
directly related to issue (g), as well as to the other issues.

In sum: because Mobex has been found by the US court in the Maritime Antitrust Case as in default, regarding charges of violation of US antitrust law (Exhibit 1 hereto), under applicable FCC law the Judge should, and we believe must, consider these violations with regard to issue (g) and all of the other issues in this Hearing. The evidence of these charges is specified in the Complaint and resides in extensive discovery evidence in this case, and involves, among other things relevant to the issues in this Hearing, most or all of the Maritime site-based licenses—issue (g). Discovery should be extended in this Hearing, as requested by this Request, so that this evidence can be brought into this Hearing for the purposes just stated. We explain and discuss this further below.

See Exhibit 1 below, a copy of the recent court *Order* filed February 19, 2013 in the Maritime Antitrust Case, *Havens et al. v Mobex and Maritime*[2] (the "*Default Order*"). This

[2] *Havens et al. v Mobex, Maritime, et al.,* case No. 11-993 in the US District Court District of New Jersey (the "Maritime Antitrust Case"). SkyTel has described this case a number of times in its pleadings in this Hearing, including its recent pro se filings by Havens.

Default Order is against Mobex,[3] Maritime's predecessor, entering a default and striking the Mobex Answer with prejudice as to SkyTel's complaint in this case of violation of US antitrust law. As further background, see the Complaint in this case, a copy of which is online.[4]. Most but not all of the SkyTel entities are the plaintiffs.[5]

FCC licensing involves whether or not a party to a license transaction violated US antitrust law. For example, Form 603 includes:

> 102) Has any court finally adjudged the Assignee/Transferee, or any party directly or indirectly controlling the Assignee/Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? / If 'Y', attach an exhibit explaining the circumstances.

See also *US v RCA*, 358 U.S. 334, and *McKeon v. McClatchy*, 1969 U.S. Dist. LEXIS 10593, citing US v RCA, each cited in relevant parts in Appendix 1 below: these show that the FCC must consider violation of antitrust law, even independent a determination of violation by a court (or FTC or DOJ), but certainly where the violation is under 47 USC §313.

In this case, Mobex has been found by a US court Order, the *Default Order*, in default as to the SkyTel plaintiffs' detailed charges of violation of the antitrust law that is summarily indicated in the Form 603 qualification question above, and that is more fully stated in 47 USC §313 (emphasis added):

> 47 USC § 313 - Application of antitrust laws to manufacture, sale, and trade in radio apparatus
> (a) Revocation of licenses

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[3] The two Mobex defendants shown in the Complaint, herein called "Mobex."

[4] A copy is on the federal courts' PACER systems, and a copy may also be found in FCC files, as the attachment to the Section 1.65 report found at the following link: https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1464088908&attachmentKey=18687836&attachmentInd=applAttach

[5] While only most of the SkyTel entities are involved, for convenience, we call these plaintiffs herein "SkyTel."

> All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: Provided, however, That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.
>
> (b) Refusal of licenses and permits
>
> The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section.

The Complaint (see above) in the Maritime Antitrust Case involves violation of "law of the United States relating to unlawful restraints and monopolies….," which include the Sherman Act § 1.

Under 47 USC §313(b), as shown above, Congress has provided that "The Commission is … directed to refuse a station license … to any person (or to any person directly or indirectly controlled by such person) whose license have been revoked by a court under this section." Under antitrust law, the defendants are jointly as well as severally liable of violations of the law, if found. Mobex has by default judgment been found in violation, which applies to Maritime due to said joint liability: Maritime is the defendant directly related to Mobex in this antitrust case as co-conspirator defendant as charged, and the successor of all of the Mobex site-based AMTS licenses and alleged operating, valid stations nationwide, and related business.

The Default Order will result in a judgment of default in the Maritime Antitrust Case for reasons shown in the plaintiff's motion that was granted in full by the Default Order, including

the long history of Mobex participation in the case with counsel, and in explicit coordination with Maritime and its counsel (the court designated these defendants as one common group of defendants for purposes of discovery and limiting plaintiffs' discovery rights, etc.): the Default Order was specifically an issue in this case before the order was entered, or even sought, based upon actions by Mobex and its counsel, and with no opposition by Maritime (or any other defendant: several parties affiliated with Mobex and Maritime, as charged in the Complaint). However, even prior to said default judgment being entered based upon the Default Order, the FCC should and must consider clear evidence of violation of US antitrust law, as indicated in the cases cited above and further presented in the Appendix hereto.

Under FCC law, as shown by the above-cited qualifying question on Form 603, a prospective licensee must qualify (and a licensee must remain qualified) as to not having violated and not violating US antitrust law. In this regard, Maritime obtained all of the site based AMTS licenses involved in this Hearing from Mobex who obtained all of them (but for a small percentage of stations) as the assignee of Watercom and Regionet, as FCC records show. Maritime, as the ultimate successors of these Waterom and Regionet AMTS licenses (including subsidiary station authorities), cannot protect these licenses by assignment laundering or otherwise, if they are defective due to Mobex's violation of US antitrust law, as is now found in the Default Order. If they are defective, they are void at the time of the violations took place. Under 47 USC §308, Congress has instructed:

47 USC 308
***
(b) Conditions
All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

The FCC used the above process to investigate Maritime which lead to the HDO and this Hearing: that was based on the SkyTel petitions as the "petitioners" discussed in the HDO, including with regard to the Regionet and Watercom AMTS site based licenses and stations obtained by Mobex, and fairly quickly assigned over to Maritime. Under this Section 308 authority, the FCC, including the Judge in this Hearing, may "determine whether such original application should be … denied or such license revoked." For reasons given above, the Judge should consider the Default Order and the analysis and finding we summarize above, and grant this extension request to allow the evidence noted above to be brought into this case, not only for issue (g) but for the other issues under the HDO also.

Other Relief Sought

Due to the discovery deadline, SkyTel submitted the above at this time. It will, in the next available time, submit a request for related relief, and provide additional reasons to the above as to why the discovery deadline should be reasonably extended in this Hearing.

Respectfully submitted,

/s/
Warren Havens
Individually and for SkyTel legal entities
(previously defined in this case)

2509 Stuart Street
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510 841 2220, 848 7797

Dated: February 28, 2013

Declaration

I declare under penalty of perjury the facts I present above are true and correct.

/s/
Warren Havens

Dated: February 28, 2013

From *US v RCA*, 358 U.S. 334 (emphasis added):

> 18. This conclusion is re-enforced by the Commission's disavowal of either the power or the desire to foreclose … antitrust actions aimed at transactions which the Commission has licensed. This position was taken both before the district judge below, and in a Supplemental Memorandum filed in this Court, page 8:
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> "Concurrent with the jurisdiction of the Department of Justice to enforce the Sherman Act, the Commission, of course, has jurisdiction to designate license applications for hearing on public interest questions arising out of facts which might also constitute violations of the antitrust laws. This does not mean, however, that its action on these public interest questions of communications policy is a determination of the antitrust issues as such. Thus, while the Commission may deny applications as not in the public interest where violations of the Sherman Act have been determined to exist, its approval of transactions which might involve Sherman Act violations is not a determination that the Sherman Act has not been violated, and therefore cannot forestall…an antitrust suit challenging those transactions."
>
> . . . .
> This is not to imply that federal antitrust policy may not be considered in determining whether the "public interest, convenience, and necessity" will be served …, for this Court has held the contrary.

From McKeon Construction v. McClatchy Newspapers. 1969 U.S. Dist. LEXIS 10593; 1969 Trade Cas. (CCH) P73, 212, citing US v RCA (above) (emphasis added; asterisks in original):

> The question of whether F.C.C. approval bars action under the antitrust laws was considered in a different factual situation in United States v. Radio Corporation of America, et al., 1959, 358 U.S. 334, 79 S.Ct. 457, 3 L.Ed.2d 354. .... The F.C.C. approved the exchange. The United States brought a civil suit, grounded on a Section 1, Sherman Act violation.
>
> The defendant advanced the argument that the F.C.C. approval foreclosed subsequent Government action. It was stipulated that the Commission had all the information available to the Court before it and "that the F.C.C. decided all issues relative to the antitrust laws that were before it". For R.C.A. to prevail, the Court held, it would be necessary to demonstrate the extent to which Congress authorized the Commission to pass on antitrust questions.
>
> The Court, after examining the history of the Radio Act of 1927 held that "[while] this history compels the conclusion that the F.C.C. was not intended to have any authority to pass on antitrust violations as such, it is equally clear that courts retained jurisdiction to pass on alleged antitrust violations irrespective of Commission action." (358 U.S. at 343, 344.) Subsequent amendments, retracting language in the Radio Act concerning antitrust violations did not dispose of the overriding policy, as it "apparently [was] considered that inherent in the scheme

of the Act was the right to challenge under the antitrust laws even transactions approved by the Commission * * *". (358 U.S. at 345).

Finally the Court held, "Thus, the legislative history of the Act reveals that the Commission was not given the power to decide antitrust issues as such, and that Commission action was not intended to prevent enforcement of the antitrust laws in federal courts." (358 U.S. at 346). 27

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27 In holding that the Commission did not have primary jurisdiction over the antitrust laws, the Court stated:

"This is not to imply that federal antitrust policy may not be considered in determining whether the 'public interest, convenience, and necessity' will be served by proposed action of a broadcaster, for this Court has held the contrary. Moreover, in a given case the Commission might find that antitrust considerations alone would keep the statutory standard from being met…. (358 U.S. at 351, 352).

Defendant would restrict United States v. Radio Corporation of America , to its facts, and have the court hold that F.C.C. approval can only be overturned by the antitrust laws when the antitrust violations occurred prior to the Commission's license grant. While factually distinguishable, I see no reason to so restrict United States v. R.C.A. Even though F.C.C. approval has been granted, transactions are not immunized from challenge under the antitrust laws. It would be inconsistent to grant immunity to those who gain Commission approval and receive licenses before engaging in actions in restraint of trade … and subject those who act before F.C.C. approval to the full force of the antitrust laws. This conclusion receives support from 47 U.S.C. § 313 [in the Communications Act], which states in pertinent part:

"(a) All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are declared to be applicable to * * * interstate or foreign radio communications. * * *"

From the Opinion, 2011 U.S. Dist. LEXIS 148654, on the Maritime motion to dismiss in Havens [and Skytel entities] v. Mobex, Maritime, et al., Civ. Action No. 11-993, US District Court, NJ ("MCLM Antitrust Case") (emphasis added):

Defendants argue that the FCA established an elaborate framework under which the FCC regulates radio frequency allocation, and that the FCA therefore preempts Sherman Act claims because those claims may interfere with FCC radio frequency determinations. Absent from defendants' argument, however, is any authority to suggest that a court should abstain from hearing a case within its jurisdiction merely because it touches on an area subject to sophisticated agency regulation. Cf. Raritan Baykeeper v. Edison Wetlands Ass'n, Inc., 660 F.3d 686, 691 (3d Cir. 2011) (in context of primary jurisdiction doctrine, noting that "[w]hen 'the matter is not one peculiarly within the agency's area of expertise, but is one which the courts or jury are equally well-suited to determine, the court must not abdicate its responsibility'" (quoting MCI Telecomms. Corp. v.

Teleconcepts, Inc., 71 F.3d 1086, 1094 (3d Cir. 1995) (further citations omitted))).

More to the point, defendants' argument ignores 47 U.S.C. § 152, in which an uncodified amendment states that "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." Pub. L. No. 104-104, § 601(b)(1) (1996). The amendment further clarifies that the term "antitrust laws" includes the Sherman Act. Pub. L. No. 104-104, § 601(e)(4). The legislative history of this amendment clarifies that when Congress enacted the Telecommunications Act of 1996, it sought to ensure that the FCC could not "confer antitrust immunity" through the course of its decision making. See S. Rep. No. 104-230, at 178-79 (1996) (Conf. Rep.). Thus, Congress envisioned a system in which the FCC could consider antitrust matters when reaching decisions, but that the FCC's decisions would not preclude the operation of independent antitrust statutes. See Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 406, 124 S. Ct. 872, 157 L. Ed. 2d 823 (2004) (holding that notwithstanding arguments for implied immunity, "the savings clause preserves those claims that satisfy established antitrust standards" (citation and quotation marks omitted)). Accordingly, the FCA does not preempt plaintiffs' Sherman Act claim.
* * * *

3. Sherman Act Section 1 Claim

A claim under section one of the Sherman Act, 15 U.S.C. § 1, consists of four elements: "(1) concerted action by the defendants; (2) that produced anti-competitive effects within the relevant product and geographic markets; (3) that the concerted action[was] illegal; and (4) . . . [plaintiff] was injured as a proximate result of the concerted action." Howard Hess Dental Labs., Inc., 602 F.3d at 253 (quoting Gordon v. Lewistown Hosp., 423 F.3d 184, 207 (3d Cir. 2005)). Defendant alleges that the complaint fails to satisfy the first element because it does not allege that defendants
"conspired or agreed to act in concert with any other party, let alone the other defendants." (Defs.' Br. Supp. Mot. Dismiss 39.) See also Twombly, 127 S. Ct. at 1961 (in antitrust case, insufficient to allege "parallel conduct unfavorable to competition" without "some factual context suggesting agreement, as distinct from identical, independent action").

The facts here, however, are distinguishable from the facts in Twombly. Here, plaintiff has stated sufficient facts to "allow[] the court to draw the reasonable inference that" defendants had the requisite intent to act in concert. Iqbal, 129 S. Ct. at 1949 (citing Twombly, 127 S. Ct. at 1965). First, plaintiff alleges specific reasons for the defendants' decisions to act in concert, such as that the defendants made a spectrum-splitting arrangement to allow each to share in the benefits of the AMTS licenses. (See Second Am. Compl. ¶ 36.) Moreover, Havens learned through communications with PSI that PSI and Mobex were cooperating and had an intertwined financial stake in the AMTS spectrums at issue. (Id. ¶ 38.) Cooperation could also be seen in other areas, such as Mobex and PSI locating stations at the same sites in order to reduce costs. (Id. ¶ 39.) This cooperation

extended beyond physical interactions, as Mobex and PSI jointly petitioned the FCC on certain matters regarding the licenses. (Id. ¶ 41.)

The complaint alleges a history of cooperation and interactions between the companies on the very licenses at issue in this case. This makes plausible plaintiffs' allegation of concerted action, and plaintiffs have therefore stated a claim on which relief can be granted.

/ / /

CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 28, 2013, I caused a true copy of the foregoing filing in FCC docket 11-71 to be served by USPS first class mail (with courtesy email copies, using emails of record) to:

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/s/

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